APPENDIX

Internal Revenue Code of 1939:

CHAPTER 2—ADDITIONAL INCOME TAXES

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SUBCHAPTER E—EXCESS PROFITS TAX

Part I

SEC. 710. IMPOSITION OF TAX.

(a) *Imposition.*—

(1) *General Rule.*—There shall be levied, collected, and paid, for each taxable year, upon the adjusted excess-profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under Section 727) a tax equal to whichever of the following amounts is the lesser:

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(b) *Definition of Adjusted Excess Profits Net Income.*—As used in this section, the term "adjusted excess profits net income" in the case of any taxable year means the excess profits net income (as defined in section 711 minus the sum of:

(1) *Specific exemption.*— * * *

(2) *Excess profits credit.*—The amount of the excess profits credit allowed under section 712; and

(3) *Unused Excess profits credit.*—The amount of the unused excess profits credit adjustment for the taxable year, computed in accordance with subsection (c).

(c) *Unused Excess Profits Credit Adjustment.*—

(1) *Computation of unused excess profits credit adjustment.*—The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such taxable year.

(2) *Definition of unused excess profits credit.*—The term "unused excess profits credit" means the excess, if any, of the excess profits credit for any taxable year beginning after December 31, 1939, over the excess profits net income for such taxable year, computed on the basis of the excess profits credit applicable to such taxable year. * * *

(3) *Amount of unused excess profits credit carry-back and carry-over.*—

(A) *Unused Excess Profits Credit Carry-Back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-back for each of the two preceding taxable years, * * *

(B) *Unused Excess Profits Credit Carry-Over.*—If for any taxable year beginning after December 31, 1939, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-over for each of the two succeeding taxable years, * * *

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(26 U. S. C. Sec. 710.)

Sec. 712. EXCESS PROFITS CREDIT—ALLOWANCE.

(a) *Domestic Corporations.*—In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed. * * *

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(d) *Special Rule in Connection with Certain Reorganizations.*—For the existence of taxpayer through component corporations, see section 740(f).

(26 U. S. C. Sec. 712.)

Sec. 713. EXCESS PROFITS — BASED ON INCOME.

(a) *Amount of Excess Profits Credit.*—The excess profits credit for any taxable year, computed under this section, shall be—

(1) *Domestic corporations.*—In the case of a domestic corporation—

(A) 95 per centum of the average base period net income,

(B) Plus 8 per centum of the net capital addition as defined in subsection (g), or

(C) Minus 6 per centum of the net capital reduction as defined in subsection (g).

(d) *Average Base Period Net Income.—Determination.*—

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(4) For the computation of average base period net income in the case of certain reorganizations, see section 742.

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(26 U. S. C. Sec. 713.)

Sec. 740. DEFINITIONS.

For the purposes of this Supplement—

(a) *Acquiring Corporation.*—The term "acquiring corporation" means—

* * * * *

(3) A corporation the result of a statutory merger of two or more corporations; * * *

* * * * *

(b) *Component Corporation.* — The term "component corporation" means—

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(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger; * * *

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(f) *Existence of Acquiring Corporation.* — For the purposes of section 712(a), if any component corporation of the taxpayer was in existence before January 1, 1940, the taxpayer shall be considered to have been in existence before such date.

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(26 U. S. C. Sec. 740.)

Sec. 742. SUPPLEMENT A AVERAGE BASE PERIOD NET INCOME.

In the case of a taxpayer which is an acquiring corporation, its average base period net income (for the purpose of the credit computed under section 713) shall be the amount computed under section 713 or the amount of its Supplement A average base period net income, whichever is the greater. The Supplement A average base period net income shall be the amount computed without regard to subsection (h) of this section or computed under subsection (h) of this section, whichever is the greater. The Supplement A average base period net income shall be computed as follows:

(a) By ascertaining with respect to each of its base period years—

(1) The amount of its and each of its component corporation's excess profits net income for each of its and such component corporation's taxable years beginning with or within such base period year; * * *

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(26 U. S. C. Sec. 742.)

General Corporation Law of Delaware

Sec. 60. Status, right, liabilities, etc., of constituent and surviving corporations following merger or consolidation

When an agreement shall have been signed, acknowledged, filed and recorded, as in Section 59, Section 59B or in Section 59C of this chapter is required, for all purposes of the laws of this State the separate existence of all the constituent corporations, parties to said agreement, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agree-

ment, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation resulting from or surviving such consolidation or merger; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the resulting or surviving corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this State, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this Chapter; provided, however, that all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting or surviving corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.